

REMARKS

Claim 1 has been amended by requiring the elastomer to be dispersed in the oily phase as well as the presence of the specified glycine derivatives in an amount sufficient to effect such dispersion. Support for these amendments exists throughout the present application, including the examples, which demonstrate that compositions containing the required glycine derivatives effect dispersion of the claimed elastomers, whereas compositions which do not contain the required glycine derivatives do not result in such dispersion (but rather result in compositions containing agglomerations/plaques/large globules of the elastomers).

Claims 1, 6 and 8-24 are currently pending, although claims 21-24 have been withdrawn from consideration. Upon indication of allowable subject matter, Applicants intend to seek rejoinder of the withdrawn claims as appropriate, particularly claims 21-23 which ultimately depend from claim 1. (See, MPEP 821.04).

The Office Action rejected claims 1, 6, 8-18 and 20 under 35 U.S.C. § 103 as obvious over WO 02/03952 (“Robinson”) in view of U.S. patent application publication no. 20010002257/French patent application no. 2,771,632 (“Stoltz”), claims 1, 6 and 8-20 under 35 U.S.C. § 103 as obvious over EP 1,055,406/U.S. patent 6,465,402 (“Lorant”) in view of U.S. patent 6,346,255 (“Fontinos”), and claims 1, 6 and 8-20 under 35 U.S.C. § 103 as obvious over U.S. patent 6,197,287 (“Mallo”) in view of Lorant. In view of the following comments, Applicants respectfully request reconsideration and withdrawal of these rejections.

The claims as amended are directed to a specific type of composition (oil-in-water emulsion) having (1) at least 1% of a specific elastomeric compound; (2) capryloylglycine and/or undecylenoylglycine; and (3) a hydrophilic polymer, wherein the elastomeric

compound is dispersed in the oily phase and the glycine derivate is present in an amount sufficient to effect such dispersion. The applied art neither teaches nor suggests such specific oil-in-water emulsions, particularly such compositions in which the elastomeric compounds are dispersed in the oily phase.

As noted in the Background section of the present application, oil-in-water emulsions containing at least 1% elastomeric organopolysiloxane and hydrophilic polymer(s) tend toward destabilization. (See, page 5 of the present application). One indication of such destabilization is the formation of plaques or large globules (agglomerations) of the elastomeric compounds within the compositions. Applicants have discovered that adding capryloylglycine and/or undecylenoylglycine to oil-in-water emulsions containing at least 1% of a specific type of elastomeric organopolysiloxane and hydrophilic polymer(s) improves stability of the emulsions. For example, examples 3-6 of the present application, demonstrate that emulsions containing the claimed glycine derivatives are stable, containing elastomeric compounds dispersed within the oily phase, whereas emulsions lacking the required glycine derivatives are not. Similarly, the Rule 132 declarations submitted July 24, 2007, and November 1, 2006, demonstrate that emulsions containing the claimed glycine derivatives are stable, whereas emulsions containing different amino acid compounds (including glycine itself) are not and have large oily globules throughout.

The data in both the examples of the present application and the Rule 132 declarations submitted in this case demonstrate that the claimed glycine derivatives can stabilize oil-in-water emulsions containing at least 1% elastomeric organopolysiloxane and hydrophilic polymer(s) and disperse the elastomeric compounds in the oily phase of these compositions, and that such stabilization was surprising and unexpected given the instability of and presence of large oily globules in extremely similar compositions. (See, Rule 132 declaration

submitted November 1, 2006, at par. 9, and Rule 132 declaration submitted July 24, 2007, at par. 7). Based on this information alone, Applicants respectfully submit that the pending rejections are improper and should be withdrawn.

That is, even assuming that a *prima facie* case of obviousness has been set forth (which, as explained below, is not the case), Applicants have rebutted such a hypothetical case of obviousness with their showing of unexpected and surprising stability of the claimed oil-in-water emulsions, and by their narrowing the claims to be commensurate in scope with their showing of unexpected and surprising results.

This is particularly true for claims 12-14 which are directed to specific hydrophilic polymers.

For at least this reason Applicants respectfully submit that the pending rejections under 35 U.S.C. § 103 should be reconsidered and withdrawn.

Furthermore, no *prima facie* case of obviousness exists. Of particular note in this regard is the fact that none of the applied art teaches, suggests or recognizes that the required glycine derivates can be added in an amount sufficient to disperse elastomeric compounds within the oily phase of an emulsion. Rather, the applied art generally suggests that such glycine derivatives could optionally be added to compositions for some other purpose, if desired. Nowhere is there even a scintilla of a suggestion that the required glycine derivatives could be added to an emulsion containing a significant amount of elastomer, and that the result would be a stable composition having elastomer dispersed within the oily phase.

Stated another way, the applied art neither teaches, suggests, nor recognizes that adding the required glycine derivatives is a result effective variable with respect to stabilizing emulsions and dispersing elastomers in the oily phase. Because of this, no motivation would

have existed to add the required glycine derivatives to the claimed compositions, let alone to add the required glycine derivatives to the claimed compositions and then to optimize their concentration to effect composition stabilization. Nothing in the applied art would lead one skilled in the art to this invention.

Robinson neither teaches nor suggests the presence of the required glycines. The Office has previously recognized this deficiency.

The Office Action recognized that Lorant, like Robinson, neither teaches nor suggests the claimed glycines (See, Office Action at page 7), meaning that Lorant cannot teach or suggest the claimed invention.

Finally, the Office Action (at page 10) recognized that Mallo does not teach or suggest elastomeric polyorganosiloxanes, meaning that Mallo cannot teach or suggest the specific type of elastomeric compound required by the claims or the specific amount of such a compound required by the claims.

Thus, by themselves, none of the primary references teaches or suggests the claimed invention.

The secondary references, Stoltz and Fontinos, do not compensate for Robinson's, Lorant's and Mallo's deficiencies. No motivation would have existed to combine these references with the primary references with the expectation that a stable, acceptable emulsion having elastomer dispersed in the oily phase would result.

For example, the fact that Robinson states over the course of 20 pages (pages 41-60) that additional active agents can be added to his compositions does not teach or suggest the claimed invention either --- Robinson's disclosure is so broad and general that one skilled in the art would not have been motivated to add the required lipophilic glycine compounds to Robinson's compositions with a reasonable expectation that an acceptable composition would

result (particularly given solubility issues), let alone to add the required glycine compounds in an amount sufficient to stabilize an emulsion and disperse elastomer in the oily phase. For at least this reason, no motivation would have existed to combine Robinson and Stoltz to yield the claimed invention.

Similarly, the combination of Lorant and Fontinos does not yield the claimed invention. Lorant is silent concerning the claimed glycine compounds. Fontinos relates to a patch or pad. Nothing in either of these references would lead one skilled in the art to add an emulsion stabilizing effective amount of the required glycine compound to Lorant's compositions. That is, given that Fontinos' patches or pads are so structurally different from Lorant's compositions, no teaching, suggestion or motivation would have existed to add an emulsion stabilizing effective amount of the claimed glycine compounds to Lorant's compositions with the expectation that a stable emulsion having elastomer dispersed in the oily phase would result.

Finally, Mallo relates to an inverted latex product, not the claimed oil-in-water emulsion, and no motivation would have existed to convert Mallo's desired latex product into the claimed emulsion having elastomer dispersed within the oily phase.

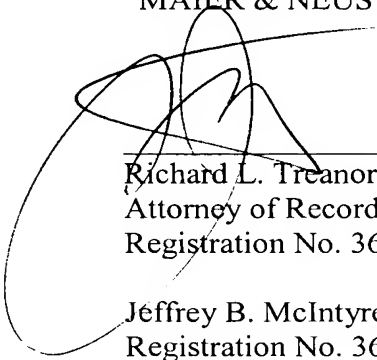
For all of the above reasons, Applicants respectfully request reconsideration and withdrawal of all pending rejections under 35 U.S.C. § 103.

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Response to Office Action dated June 23, 2008

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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